



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201342019

JUL 25 2013

U.I.L. 408.03-00

T:EP:RA:T3

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXXXX
IRA X = XXXXXXXXXXXXXXXXXXXXX

Bank B = XXXXXXXXXXXXXXXXXXXXX
Company P = XXXXXXXXXXXXXXXXXXXXX
Individual C = XXXXXXXXXXXXXXXXXXXXX
Amount D = XXXXXXXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXXXXX:

This is in response to your request dated January 19, 2012, as supplemented by correspondence dated April 19, 2013, submitted on your behalf, by your authorized representative, in which you request a waiver of the 60 day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the Code).

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested

Taxpayer A represents that she received a distribution from IRA X totaling Amount D. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to an error committed by Individual C of Bank B.

Taxpayer A maintained IRA X with Company P. Taxpayer A represents that she was not pleased with the interest rate quoted her for renewal of the certificate of deposit in IRA X. Taxpayer A received a distribution from IRA X in the amount of Amount D on July 7, 20 , and, on the same day, took the distribution check directly to Bank B.

Taxpayer A discussed with Individual C of Bank B that she intended to deposit the funds into a rollover IRA account. Taxpayer A represents that Individual C encountered difficulty in opening the account and asked another employee to help her. Taxpayer A further represents that Individual C eventually finished the task and printed certain documents. At this point, Taxpayer A left Bank B with confidence that Amount D was rolled over into an IRA with Bank B.

Taxpayer A did not realize that Amount D was not rolled into a rollover IRA until December 12, 20 , when she received Notification from the Internal Revenue Service that she did not file Form 1040 for year 20 . Taxpayer A contacted her accountant who discovered the error made by Bank B.

Documentation from Bank B shows that Individual C encountered problems in opening an IRA as Taxpayer A requested and committed an error by depositing Amount D into a non-IRA account.

Based on the facts and representations, you request that the Internal Revenue Service waive the 60 day rollover requirement contained in section 408(d)(3) of the Code with respect to Amount D.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if-

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual received the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the

payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not included in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R. B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including : (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover was caused by an error committed by Individual C of Bank B.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute Amount D into a rollover IRA. Provided all other requirements of Code section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount D will be

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considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

A copy of this letter is being sent to your authorized representative pursuant to a power of attorney on file in this office.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you have any questions concerning this ruling, please contactxxxxxxxxxxxxx, and SE: T: EP RA: T3 at xxxxxxxxxxxxxxxx.

Sincerely yours,

for

Ada Perry
Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Notice of Intention to Disclose

cc: xxxxxxxxxxxxxxxx